



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

May 26, 2004

MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: James A. Pehrkon
Staff Director

Robert J. Costa
Deputy Staff Director

FROM: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Martin L. Favin
Audit Manager

Rickida L. Skinner
Lead Auditor

SUBJECT: Democratic Party of Arkansas (A01-21) – Referral Matter

On May 10, 2004, the Commission approved the final audit report on the Democratic Party of Arkansas. The final audit report (FAR) was released to the public on May 24, 2004 and includes an issue on Filing Fees (see attachment) that, based on Materiality Threshold I.C. (Receipt of Prohibited Contributions), meets the criteria for referral to your office. In response to the FAR, the committee documented that all but approximately 9% of the funds involved were permissible and transferred the remaining 9% to a nonfederal account. Also, committee counsel noted in a conversation with the lead auditor that they had implemented new procedures to ensure that this filing fee situation would not reoccur. As a result of these actions, we recommend that this matter be sent to the Alternate Dispute Resolution Office for consideration.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Rickida Skinner or Marty Favin at 694-1200.

Attachments:

- FAR Finding I (Filing Fees)

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Finding 1. Filing Fees

Summary

The DPA accepted 194 filing fees from persons seeking non-federal offices and deposited the fees into its federal account. The checks for these non-federal filing fees were drawn on personal accounts; however, there is a possibility that the personal accounts may have been reimbursed with impermissible funds. The DPA provided documentation demonstrating that the filing fees do not contain monies prohibited under the Act for all but 34 of the filing fees in question totaling \$34,019. The DPA transferred that amount to its non-federal account.

Legal Standard

Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b). 2 U.S.C. §§441b, 441c, 441e, and 441f

Ballot Access Payments. Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions. 11 CFR §100.7(b)(18)

Candidate. Candidate means an individual who seeks nomination for election, or election, to federal office. 11 CFR §100.3(a)

Facts and Analysis

The Audit staff determined that the DPA accepted 194 filing fees totaling \$390,183 from persons seeking non-federal offices and deposited the fees into one of its federal accounts. The checks for these filing fees were drawn on personal accounts and ranged from \$500 to \$8,300. These funds did not pass through to the State, as is the custom in some other states, but were retained in one of the DPA's federal accounts and used for operating expenses. The filing fees were reported by the DPA as contributions from "Individuals/Persons Other Than Political Committees" (line 11a). However, filing fees are not contributions and therefore, should not be reported as a contribution from an individual.

The 194 non-federal filing fees included 170 fees paid by persons who listed the fees on their "State of Arkansas Campaign Contribution and Expenditure Report" as a campaign expense.

The Audit staff noted that some of the checks for filing fees contained various notations on the memo line indicating the word "loan" which implies that the individuals were to be reimbursed by their non-federal committees. Based on a review of the pertinent state reports, the Audit staff determined the following:

- Of the 170 persons identified, 60 made loans to their campaigns totaling \$410,545.
- Of the 60 persons making loans to their campaign, 50 made loans that were equal to or greater than the filing fee and 21 of these were fully reimbursed.¹
- In addition, of the 170 persons seeking election to non-federal offices, 26 made contributions to their own committees totaling \$85,983.
- Of the 26 persons contributing to their own committees, 20 contributed an amount equal to or greater than the filing fee that was required to be paid by their committees.

The Arkansas election statutes do not specify the sources of the funds from which filing fees may be paid; therefore, a person in Arkansas seeking ballot access for a non-federal office may use contributions from any source permitted by Arkansas law. As a result of the differences between Arkansas and Federal law, these persons may accept contributions prohibited to the federal candidates. Since a non-federal committee may reimburse an individual who pays the filing fee with a personal check, there is the chance that the reimbursement includes impermissible funds.

The DPA did not deposit these questionable funds into a separate account; however, it did consistently maintain sufficient funds in the federal accounts to transfer the filing fees to the non-federal accounts, except for the month of March 2000. The Executive Director of the DPA explained that personal checks used to pay filing fees for non-federal offices were deposited into a DPA federal account and checks from non-federal committees for ballot access were deposited into a DPA non-federal account. This matter of depositing filing fees funded by possible prohibited sources into a DPA federal account was presented to the DPA officials along with appropriate workpapers. The DPA said it would address the issue once presented in the interim audit report.

In the interim audit report the Audit staff recommended that the DPA provide evidence that individuals seeking non-federal offices that paid filing fees from their personal accounts were not reimbursed by their committees with prohibited monies or, transfer the 194 non-federal filing fees totaling \$390,183 to its non-federal account and provide evidence of the transfer.

Committee Response to Recommendation and Audit Staff's Assessment

In response to the interim audit report, the DPA provided documentation demonstrating that individuals seeking non-federal offices who paid filing fees from their personal accounts were not reimbursed by their committees with prohibited monies for all but 34 of the filing fees in question totaling \$34,019. The DPA conceded that \$27,589 in filing fees were reimbursed with impermissible funds. The difference between the Audit staff's figure and the DPA's figure is due to a disagreement in the analysis of 12 of the filing fees as to the amount of

¹ For 1999-2000, Arkansas state law allowed corporations and labor unions to make contributions to non-federal candidates limited to \$1,000 per candidate per election.

permissible funds available. The DPA transferred \$34,019 to the non-federal account and provided evidence of such transfer. The DPA also submitted amended reports.

2024-19-025-3565